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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

SMITHKLINE BEECHAM CORPORATION,)
d/b/a GLAXOSMITHKLINE,)
Plaintiff,)
vs.)
ABBOTT LABORATORIES,)
Defendant.)

Case No. 4:07-cv-05702 (CW)

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION TO MODIFY TRIAL
SCHEDULE**

Judge: Honorable Claudia Wilken
Hearing Date: March 19, 2015
Time: 2:00 p.m.
Location: Courtroom 2 (4th Floor)

1 NOTICE IS HEREBY GIVEN that on March 19, 2015, at 2:00 p.m.,¹ or as soon thereafter
 2 as the matter may be heard in Courtroom 2 of the above-referenced Court located at 1301 Clay
 3 Street, Oakland, 94612, Plaintiff GlaxoSmithKline (GSK) will, and hereby does, move for leave to
 4 modify the trial schedule.

5 GSK moves to slightly modify the trial schedule both because GSK believes its narrowed
 6 complaint will shorten the trial and because there exist certain scheduling conflicts on the part of
 7 GSK witnesses (two witnesses being entirely unavailable the week of May 4th, due to business
 8 travel abroad and prior commitment to testify in an arbitration), and counsel as described herein.
 9 Specifically, if the Court grants GSK leave to file its second amended complaint (*see* Plaintiff's
 10 Motion for Leave to File Second Amended Complaint), GSK expects that the trial will last only
 11 two weeks, or slightly less. GSK's proposed amended complaint would result in a shorter
 12 presentation of evidence at trial, and testimony by certain GSK witnesses would accordingly be
 13 moved earlier in the trial, creating scheduling conflicts. GSK requests that the Court modify its
 14 pretrial order (Dkt. No. 588) to move the commencement of trial from May 4, 2015 to May 11,
 15 2015, and GSK requests that the Court adjourn the trial for one day, on May 15, 2015, so that
 16 GSK's counsel (W. Mark Lanier) may fulfill a longstanding commitment to deliver the
 17 commencement address at Pepperdine University School of Law on that day.

18 Counsel for GSK has consulted with counsel for Defendant Abbott Laboratories
 19 ("Abbott"). Counsel for Abbott has informed counsel for GSK that it may oppose GSK's motion
 20 to modify the trial schedule. GSK has proposed the following briefing schedule to Abbott:

- 21 • Abbott will file its opposition, if any, by **Thursday, March 5, 2015**.
- 22 • GSK will file its reply to Abbott's opposition, if any, by **Monday, March 9, 2015**.
- 23 • If the Court should deem oral argument necessary to decide this motion, the parties
 24 have agreed to a hearing on **Thursday, March 19, 2015**, subject to the Court's
 25 approval.

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 28 ¹ Counsel for Abbott has informed counsel for GSK that it has no objection to a hearing on
 this motion on March 19, 2015.

I. GSK SEEKS TO MODIFY THE TRIAL SCHEDULE TO ACCOMMODATE SCHEDULING CONFLICTS.

If the Court grants leave for GSK to amend its complaint, GSK anticipates that the trial can be concluded in approximately ten days, rather than the fifteen days originally scheduled. In light of this reduction and due to scheduling conflicts of key witnesses, GSK requests that the Court move the start date of the trial from May 4, 2015 to May 11, 2015. Additionally, GSK requests that no trial proceedings be held on May 15, 2015, because of a scheduling conflict for GSK's trial counsel Mark Lanier.

If the Court grants GSK's motion for leave to file a second amended complaint, GSK's trial presentation will naturally be shortened. As a result, GSK will likely call certain fact and expert witnesses earlier in its trial presentation than previously expected. These witnesses, who had expected to testify during the second week of May, would now be called in the first week of May under the Court's current schedule. GSK has learned that two of its key witnesses have scheduling conflicts in the first half of May that will likely make them unavailable to testify if trial remains scheduled to commence on May 4, 2015.

First, Dr. Stephen Prowse (a GSK expert) is unavailable to testify at trial under the current start date set by the Court. He is required to testify in an arbitration proceeding in New York in early May. Dr. Prowse has consulted with counsel in that arbitration, and while the exact dates of his testimony are uncertain at this time, Dr. Prowse expects to be unavailable to testify in this matter until late in the week of May 11, 2015. Dr. Prowse's testimony is necessary to the jury's understanding of the damages GSK seeks at trial. GSK was unable to replace Dr. Prowse, on objection of the defendant.

Second, John Keller, GSK's former vice president for worldwide business development, has international travel requirements during the two weeks preceding May 10th. The earliest he can possibly testify is the week of May 11, 2015. Mr. Keller played a key role in negotiating the terms of GSK's Norvir licensing agreement with Abbott, and his testimony is important to develop the issues at trial.

1 Finally, GSK requests a break in the trial proceedings on Friday, May 15, adjourning on
2 Thursday, May 14 and resuming again on Monday, May 18. GSK's trial counsel Mark Lanier has
3 a longstanding commitment to deliver the commencement address at the Pepperdine School of
4 Law on the morning of May 15. If the trial were to proceed on that day, it would be impossible
5 for Mr. Lanier to represent his client and, simultaneously, to honor his commitment to Pepperdine
6 and its graduating students.

7 This request to modify the trial schedule set by pretrial order (Dkt. No. 588) is appropriate
8 under Fed. R. Civ. P. 16(b). "District courts should generally allow amendments of pre-trial orders
9 when 'no substantial injury will be occasioned to the opposing party, the refusal to allow the
10 amendment might result in injustice to the movant, and the inconvenience to the court is slight.'" *Campbell Indus. v. M/V Gemini*, 619 F.2d 24, 27-28 (9th Cir. 1980) (quoting *Angle v. Sky Chef, Inc.*, 535 F.2d 492, 495 (9th Cir. 1976)); *see also Amarel v. Connell*, 102 F.3d 1494, 1515 (9th
11 Cir. 1996), *as amended* (Jan. 15, 1997) (stating that the Ninth Circuit has "made it clear that
12 district courts should generally allow amendments of pre-trial orders" on showing of the *Campbell*
13 factors).

14 There should not be any significant injury to Abbott in delaying the start of the trial. The
15 Court originally scheduled three weeks for the trial; GSK now proposes that the trial take place
16 only during the second and third of those same three weeks, time when Abbott would be required
17 at trial in any case. Far from causing injury to Abbott, this would instead save Abbott considerable
18 time and expense, more than offsetting any possible inconvenience. By contrast, GSK faces
19 substantial prejudice. As shown above, GSK may be deprived of the testimony of two key
20 witnesses and even of the presence of its trial counsel on one of the days set for trial (or GSK's
21 trial counsel would have to renege on his commitment to the Pepperdine School of Law). Finally,
22 GSK respectfully submits that the inconvenience to the Court will be slight. As discussed above,
23 the two weeks GSK proposes for trial had already been reserved by the Court.

24 For these reasons, GSK respectfully asks that the Court grant its motion to modify the trial
25 schedule.
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1 Dated: February 27, 2015

/s/

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